

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 6132) CASE CLOSURE UNDER THE
6 QUEEN ANNE'S COUNTY DEMOCRATIC) ENFORCEMENT PRIORITY
7 CENTRAL COMMITTEE) SYSTEM
8
9

10 **GENERAL COUNSEL'S REPORT**

11 Under the Enforcement Priority System, matters that are low-rated _____

12 _____ are

13 forwarded to the Commission with a recommendation for dismissal. The Commission has
14 determined that pursuing low-rated matters compared to other higher-rated matters on the
15 Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.
16 The Office of General Counsel scored MUR 6132 as a low-rated matter.

17 The complainant, Sharon Maenner Carrick, Chairman of the Queen Anne's County
18 Republican Central Committee, alleges that the Queen Anne's County Democratic Central
19 Committee ("Committee"), a Maryland local party committee that is not registered with the
20 Federal Election Commission ("FEC"), paid for newspaper advertisements supporting then-
21 presidential candidate Barack Obama, which lacked the proper "authority line" or disclaimer.
22 The complaint enclosed copies of the advertisements, consisting of remarks by Susan
23 Eisenhower, granddaughter of former president Dwight D. Eisenhower, which allegedly ran in
24 three different newspapers shortly before the November 4, 2008 presidential election. Two of
25 the advertisements included the following lines at the bottom of each page: "Republicans for
26 Obama, Eastern Shore," followed either by a disclaimer, which read "Paid for by QACty
27 Central Committee, Nancy Hagman, Treasurer" or "Paid for by QACty Democratic Central
28 Committee, Nancy Hagman, Treasurer." The third advertisement included the following line

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1 at the bottom of the page: "Paid for by QACty Democratic Central Committee, Nancy
2 Hagman, Treasurer."

3 In response, the Committee first asserts that the complainant's reference to "authority
4 line" is a reference to Maryland state law and does not implicate the Federal Election
5 Campaign Act of 1971, as amended ("the Act"). Second, addressing the issue of whether the
6 Committee's payments for the advertisements triggered political committee status, as set forth
7 in 2 U.S.C. § 431(4)(C), the Committee advises that the total cost of the advertisements was
8 approximately \$3,000 and that they promoted the election of Democratic candidates generally,
9 with no more than one-third to one-half of each advertisement expressly advocating the
10 election of Mr. Obama to the presidency. Therefore, according to the Committee, the portion
11 of its disbursement that constituted an expenditure was either below the \$1,000 expenditure
12 threshold or exceeded the threshold by a *de minimus* amount.

13 The focus of the complaint concerns the appropriateness of the Committee's
14 disclaimer. The Committee acknowledged in its response that the advertisements "arguably"
15 contained express advocacy. Moreover, it appears that the advertisements ran in three
16 different newspapers. Thus, the advertisements potentially could be characterized as a form of
17 "public communication," under 11 C.F.R. § 100.26. Therefore, the advertisements may have
18 required an appropriate federal disclaimer, which would have noted that the federal candidate
19 did not authorize the advertisements. See 2 U.S.C. §§ 441d(a) and (c), and 11 C.F.R.
20 §§ 110.11(a)-(c).

21 Given the relatively small amount of the expenditures involved in this matter, along
22 with the Commission's priorities and resources, and relative to other matters pending on the
23 Enforcement docket, the Office of General Counsel believes that the Commission should

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1 exercise its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S.
2 821 (1985). This Office further recommends that the Committee be cautioned that the lack of
3 an appropriate federal disclaimer on its advertisements may have potentially violated the
4 disclaimer requirements under 2 U.S.C. § 441d and 11 C.F.R. § 110.11.


5 **RECOMMENDATIONS**

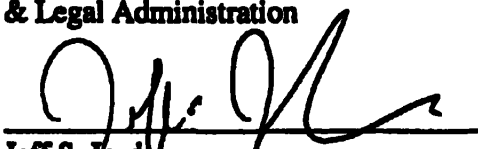
6 The Office of General Counsel recommends that the Commission dismiss
7 MUR 6132, send a cautionary notification to the Queen Anne's County Democratic Central
8 Committee concerning its potential violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11, close
9 the file, and approve the appropriate letters.


10 Thomasenia P. Duncan
11 General Counsel

12
13 6/2/09
14 Date

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